

Message Text

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ACTION EA-14

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 4627

INFO CSAF JACI WASHDC

CINCPAC SJA

CAMP SMITH HAWAII

CINCPACAF SJA

HICKAM AFB HAWAII

CINCPACREPPHIL SJA

SUBIC

13 TH AF SJA CLARK AIR BASE

405 TH CSG CLARK AIR BASE

C O N F I D E N T I A L MANILA 4561

E. O. 11652: GDS

TAGS: MARR, RP

SUBJECT: FCJ- T. SGT. CHARLES E. AGEE

REF: 405 TH CSG DTG 190836 Z MARCH 1973

BEGIN SUMMARY: AGEE CASE INVOLVES ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION. CHIEF STATE PROSECUTOR GRANTED WAIVER IN CASE JANUARY 1973. DECISION TO WAIVE WAS APPARENTLY NOT CLEARED WITH SECRETARY OF JUSTICE WHO LATER REVERSED WAIVER DECISION. PRIVATE COUNSEL FOR AGEE HAS SUBMITTED PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT ASKING FOR REVIEW OF : (A) WHETHER WAIVER ONCE GRANTED CAN BE UNILATERALLY WITHDRAWN; (B) WHETHER CITY OR PROVINCIAL FISCALS ARE THE ONLY PROPER GOP OFFICIALS AUTHORIZED TO DECIDE ON JURISDICTION; AND (C) WHETHER SECRETARY OF JUSTICE HAS AUTHORITY TO REVERSE DECISION OF FISCALS AND OTHER OFFICIALS WITH RESPECT TO

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GRANT OF WAIVERS. SUPREME COURT HAS ASKED SOLICITOR GENERAL TO COMMENT ON CASE AND HE HAS ASKED EMBASSY WHETHER USG SUPPORTS POSITION TAKEN BY AGEE IN HIS PETITION. END SUMMARY.

1. SOLICITOR GENERAL MENDOZA PHONED POL/ MIL OFFICER TO DISCUSS AGEE CASE. AGEE HAS BEEN CHARGED WITH ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION, INCLUDING ONE THOMPSON SUBMACHINE GUN, ONE 45- CALIBER REVOLVER AND ONE 22- CALIBER REVOLVER. DECISION OF CHIEF STATE PROSECUTOR NOCON TO WAIVE PHIL JURISDICTION IN CASE WAS MADE KNOWN AT JANUARY 24 SPECIAL CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE MEETING. SUBSEQUENTLY, FOLLOWING ISSUANCE OF AN ORDER DATED FEBRUARY 27, 1973, JUDGE EJERCITO REQUESTED SECRETARY OF JUSTICE TO COMMENT ON MATTER OF THE WAIVER. SECRETARY OF JUSTICE DID SO IN MARCH AND CITING GOP CAMPAIGN AGAINST " LOOSE" FIREARMS, INCLUDING THOSE " ENANATING FROM US MILITARY BASES", SECRETARY OF JUSTICE DECLARED THAT AGEE CASE WAS OF PARTICULAR IMPORTANCE TO GOP AND REVERSED CHIEF STATE PROSECUTOR' S WAIVER OF JURISDICTION. (WE HAVE LEARNED THAT CHIEF STATE PROSECUTOR DID NOT CONSULT SECRETARY OF JUSTICE WHEN HE ISSUED WAIVER AND SECRETARY' S STERN REACTION IS IN PART DESIGNED TO MAKE IT CLEAR THAT ONLY HE MAKES FINAL DECISIONS ON WAIVERS.)

2. SGT. AGEE HAS RETAINED PRIVATE COUNSEL AND HAS PETITIONED SUPREME COURT ON MARCH 28 FOR WRIT OF CERTIORARI. THE PETITION ASKS FOR A REVIEW OF THE QUESTION OF WHETHER A GRANT OF WAIVER IS A POLITICAL ACT OF GOVERNMENT AND ONCE GRANTED CANNOT BE UNILATERALLY WITHDRAWN. REVIEW IS ALSO ASKED OF WHETHER THE CITY OR PROVINCIAL FISCAL WHERE THE OFFENSE WAS COMMITTED IS THE ONLY PROPER OFFICER OF THE GOP TO DECIDE ON JURISDICTION. FURTHER, REVIEW IS ASKED OF WHETHER SECRETARY OF JUSTICE HAS THE AUTHORITY TO RESCIND OR OTHERWISE REVERSE DECISIONS OF FISCALS WITH RESPECT TO WAIVERS OF JURISDICTION.

3. AFTER DISCUSSING THE ABOVE FACTURAL SITUATION, SOLICITOR GENERAL MENDOZA ASKED WHETHER THE USG SUPPORTED THE AGEE POSITION THAT THE WAIVER GRANT CONCURRED IN BY
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CHIEF STATE PROSECUTOR NOCON WAS FINAL AND IRREVOCABLE,

AND THAT THE SUBSEQUENT DISAVOWAL OF THAT WAIVER BY THE SECRETARY OF JUSTICE HAD NO EFFECT. MENDOZA SAID HE WOULD TAKE THE LINE IN THE COMMENT HE WOULD FILE WITH THE SUPREME COURT THAT MATTER OF WAIVER IS BASICALLY A POLITICAL DECISION BY COMPETENT AUTHORITY. HE SAID HE BELIEVED THAT THE ABILITY TO GRANT WAIVERS WAS NOT AN ACT OF INDIVIDUAL RESPONSIBILITY AND IS NOT FIXED AT ANY PARTICULAR LEVEL OF GOVERNMENT. RATHER, JUSTICE DEPT.' S CAPABILITY TO WAIVE OR NOT WAIVE JURISDICTION IS DERIVED FROM PRESIDENT' S POLITICAL AUTHORITY. SOLICITOR GENERAL SAID HIS ARGUMENT WOULD CONCLUDE THAT THE ISSUE OF WAIVER IS OUTSIDE THE JURISDICTION OF THE COURTS AND WITHIN THE EXERCISE OF SOVEREIGN POLITICAL AUTHORITY AND THAT AGEE' S REQUEST FOR WRIT OF CERTIORARI SHOULD BE DENIED.

4. REQUEST THAT EMBASSY BE PROVIDED WITH USG VIEW OF POSITIONS TAKEN BY AGEE' S COUNSEL IN PETITION FOR WRIT OF CERTIORARI.
BYROADE

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